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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 887

3259 M STREET, INC., *Petitioner,*

v.

THE CITIZENS ASSOCIATION OF GEORGETOWN,
Respondent.

BRIEF IN OPPOSITION

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Respondent has been directed by the Court to file a response to the petition for certiorari in the above-entitled case. Respondent did not originally file such a response because it considered the case law governing the subject matter of this suit to be so well settled that the questions presented plainly do not warrant consideration by the Court.

This case was argued in the court below on September 5, 1968, on cross-motions for summary reversal and for summary affirmance. Less than one month later, on September 30, 1968, the United States Court of Appeals for the District of Columbia Circuit unanimously held in a *per curiam* opinion of two paragraphs that since

the respondent "is an authorized spokesman organized to promote these interests for its individual members, it too has standing to sue in order to protect their interests" (footnote deleted). The Court cited at least six cases and the D.C. Code to support its conclusion. The Court reversed and remanded for disposition on the merits, so that the case is now in an interlocutory posture.[1]

Since the cases cited by the Court fully support the action which it took, respondent viewed—and still views—the questions presented as bordering on the frivolous. It is quite true that some state cases and older Federal cases contain language which, read out of context, might tend to support the petitioner's argument. In more recent years, however, this Court and other courts have steadily expanded the concept of representation of citizens by associations authorized to protect their interests, so that there can no longer be any doubt on this subject that need be resolved.[2] *Mac-*

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[1] Since the filing of the Petition for a Writ of Certiorari herein, petitioner applied for and was granted a new liquor license by the District of Columbia Alcoholic Beverage Control Board. Said license was for one year beginning February 1, 1969 and terminating on January 31, 1970.

[2] See, *e.g.*, *Scenic Hudson Preservation Conference* v. *FPC*, 354 F.2d 608 (2d Cir. 1965), *cert. denied sub nom. Consolidated Edison Co. of New York, Inc.* v. *Scenic Hudson Preservation Conference*, 384 U.S. 941 (1966); *Nashville I-40 Steering Committee* v. *Ellington*, 387 F.2d 179 (6th Cir. 1967); *Road Review League* v. *Boyd*, 270 F. Supp. 650 (S.D.N.Y. 1967); and *cf. National Motor Freight Traffic Ass'n, Inc.* v. *United States*, 372 U.S. 246 (1963); *Danville Tobacco Ass'n* v. *Freeman*, 122 U.S. App. D.C. 135, 351 F.2d 832 (1965) and *State of Washington Dept. of Game* v. *FPC*, 207 F.2d 391, 395 n. 11 (9th Cir. 1953), *cert. denied*, 347 U.S. 936 (1954), in addition to the cases relied upon by the court below.

Arthur Liquors, Inc. v. *Palisades Citizens Ass'n,* 105 U.S. App. D.C. 180, 265 F.2d 372 (1959), for example, is directly on point with the instant case and was decided by the same Court of Appeals ten years ago. Certainly there can be no serious challenge to the proposition laid down by the court below in this case and in *MacArthur Liquors* in the light of such cases as *NAACP* v. *Button,* 371 U.S. 415 (1963).

In view of the peculiarly local nature of the dispute involved here, the brief and unanimous treatment accorded the case by the Court of Appeals, the interlocutory nature of the proceeding in its present posture, and the obvious correctness of the conclusion reached —fully supported by modern case law—respondent respectfully submits that the petition should be denied.

Respectfully submitted,

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